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No. 93-1578

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

THE DIOCESE OF COLORADO, A COLORADO CORPORATION, AND BISHOP WILLIAM FREY,

Petitioners,

v.

MARY E. MOSES n/k/a MARY ELAINE TENANTRY,

Respondent.

Petition for a Writ of Certiorari to the Supreme Court of Colorado

---

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF BEAR VALLEY CHURCH OF CHRIST AND THE ROCKY MOUNTAIN CONFERENCE OF THE UNITED METHODIST CHURCH IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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MOTION OF THE BEAR VALLEY CHURCH OF CHRIST AND THE ROCKY MOUNTAIN CONFERENCE OF THE UNITED METHODIST CHURCH FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* RESPECTING PETITION FOR CERTIORARI

Movants are non-profit religious organizations in the State of Colorado.

The written consent of the Petitioners, the Diocese of Colorado, a Colorado corporation, and Bishop William Frey, has been obtained and filed with the clerk of this Court. The consent of the Respondent has been requested and refused.

Movants seek to submit a brief *amicus curiae* because they share with Petitioners a vital interest in the outcome of this proceeding. Both movants have cases presently under appeal in Colorado concerning the manner in which the State of Colorado has interpreted the First Amendment and its effect on religious organizations where clergy have committed sexual indiscretions or been accused of such indiscretion.

Movants requested this Court grant leave to file their combined brief *amicus curiae* to present information to this Court urging modification or reversal of the opinion of the court below.

Respectfully submitted,

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INTRODUCTION

Counsel filing this *amicus curiae* brief has been involved in many lawsuits in Colorado for almost ten years where religious institutions have had claims made against them for sexual improprieties of individuals associated with the religious institution, principally clergy.

Three recent jury trials resulting in verdicts for plaintiffs in the District Court for the City and County of Denver, State of Colorado, are now in various stages of appeal with the avowed intent of ultimately petitioning this Court for a writ of certiorari based on the First Amendment. The same Trial Counsel for the Respondent in the case now before this Court was also the trial counsel for the following three cases.

A brief summary of these three cases are set forth below which exhibit the pervasive manner the Colorado Courts are now ignoring the First Amendment's proper application to religious organizations:

BEAR VALLEY CHURCH OF CHRIST[1]

This case is pending an opinion by the Colorado Court of Appeals as oral argument was held on January 31, 1994.

Denise DeBose and her minor son brought suit against Bear Valley Church of Christ and a minister, Homer Wolfe, alleging improper conduct during the counseling of the son. After two weeks of trial and five days of deliberation, on July 31, 1992, the jury returned verdicts for Denise DeBose against Homer Wolfe on claims of fiduciary duty ($6,536.25) and exemplary damages ($8,855.25), for the minor for breach of fiduciary duty ($53,117.52), outrageous conduct ($23,397.00) and exemplary damages ($50,500.00). The jury returned verdicts for Denise DeBose against the Bear Valley Church of Christ for

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[1] *Denise DeBose, and J.D.B., a minor child, by and through his parent and next friend, Denise DeBose, Plaintiffs-Appellees vs. Homer Wolfe and Bear Valley Church of Christ, a Colorado corporation, Defendants-Appellants,* Court of Appeals, State of Colorado, Case No. 92 CA 001929

breach of fiduciary duty ($12,138.75) and exemplary damages ($16,444.75); and for the minor on breach of fiduciary duty ($103,110.48), negligent hiring/supervision ($84,083.52), outrageous conduct $28,764.00), exemplary damages ($80,625.00) and held the church vicariously liable for the minister's conduct. The total verdict against the minister was $135,869.77 and against the church for $313,027.75 plus vicarious liability of $83,050.77.

The Church of Christ is a denomination of autonomous churches without a hierarchy structure. The ministers are hired directly by the congregation from applicants who need neither a seminary degree nor a certification by the denomination. The ruling authority of each church are the elders, who are selected from the congregation by a vote pursuant to the requirements set forth in the New Testament, first chapter of Timothy and first chapter of Titus. They believe the Bible is the source of all conduct. Where the Bible speaks, they attempt to comply and where the Bible is silent they are silent. The elders are responsible for the members' souls.

The Bear Valley Church of Christ was started by Roy Baker and others in 1962. Homer Wolfe was hired by the elders as its third staff minister in 1981 to start the new Family Life Ministry. Wolfe was known to most of the elders before his hiring. Roy Baker had known him since 1957. He was employed for eight years as Minister of Education at the Arvada Church of Christ just prior to being hired by the Bear Valley Church of Christ.

Homer Wolfe was raised in and served as a minister for 40 years in the Church of Christ denomination. Wolfe's family had a history of involvement as ministers in the denomination since the start of the Church of Christ at the the time of Reformation. His father, two brothers, various uncles and cousins served, in recent times, as ministers in the Church of Christ.

Denise DeBose joined the Bear Valley Church of Christ in 1981 through a friend. She had four children with J.D.B., age 17 at trial time, the oldest. Her husband was a compulsive gambler which ultimately led to a breakup of the marriage in November

of 1987 and a divorce in January 1989. In the process the family underwent bankruptcy and foreclosure on their house in 1985. She sought counseling with Homer Wolfe in 1984, which she found satisfactory. She then switched her counseling to Randy Sims from 1985 to 1989. Her son, J.D.B., counselled with Wolfe starting in 1985. J.D.B. testified Wolfe had him sit on his lap and would rub his back and legs, sometimes underneath his shorts and sliding his shirt up. He had no memory of seeing Wolfe in 1987 or in 1988, although Wolfe's records indicated he may have seen J.D.B. He stated in his deposition Wolfe rubbed his thigh only once. At trial he alleged one inadvertent touching of his penis, although at the time of his deposition he denied any touching of the penis.

In June or July of 1987 Gary Don Wygal, Sr., who was a student minister at the church's school of preaching, and his wife, Mary, came to the elders with a complaint about Wolfe's counseling visits with their son, Gary Don Wygal, Jr. The substance of the complaint was an objection to Wolfe's alleged request to view their son's circumcision. The elders held a meeting with Wolfe on August 13, 1987 about his counseling and specified it was to be pastoral counseling and not clinical. The Wygals were not satisfied with the elders feeling there had been a misunderstanding, which led to a second meeting with the elders and Wolfe on March 20, 1988. Wygals never demanded Wolfe be fired and Gary Wygal, Jr. and Wolfe exchanged apologies alone in the parking lot two weeks after March 28, 1988, witnessed by elder Taylor.

On March 23, 1988 the elders suspended Wolfe's counseling, and discharged Wolfe over his objection in early June of 1988 due to Wolfe's failure to develop the Family Life Ministry to the elders' satisfaction.

After Denise DeBose learned of Wolfe's firing, she objected to the elders, but on June 9, 1988 Randy Sims telephoned her and said not to let J.D.B. see Wolfe as a result of Sims' conversation with Stephen Magyar, who he was by then

counseling. On about June 10, 1988 Denise DeBose heard Candice Magyar at an alcohol support group meeting state Wolfe had massaged her husband and had him strip naked in front of a mirror in counseling. Mrs. DeBose immediately hurried home and questioned her son about the counseling sessions with Wolfe. She took J.D.B. to see Randy Sims who had three or four sessions with J.D.B. and did not refer him out to anyone else. J.D.B. received no further treatment until after January 3, 1992 when his deposition was taken after he filed suit.

Stephen Magyar had counseled with Wolfe from 1985 to early June of 1988 and had talked to the elders on at least four occasions in support of Wolfe after July of 1987, including the day he was fired, without revealing his later complaints and had deliberately withheld information knowing the elders had a concern Wolfe was going beyond pastoral counseling to psychotherapy.

Homer Wolfe testified his pastoral counseling was dictated by his sincerely-held religious beliefs and was consistent with the Church of Christ's practice of religion (See Appendix A, part of Wolfe's testimony at trial regarding his pastoral counseling). He acknowledged using massage in counselling but denied he employed it with J.D.B.

The trial court permitted plaintiffs to put on the following evidence against the church:

Wolfe was hired by the church without adequate investigation; Wolfe was not qualified to counsel; Wolfe's methods were improper; Wolfe was not equipped to counsel emotional matters; Wolfe improperly touched people; Wolfe required a qualified supervisor; no one at the church was qualified to supervise Wolfe; the elders' supervision resulted in harm by Wolfe; the elders acted improperly in handling the Wygal matter; the elders did not investigate the Wygal matter properly; the elders improperly defined Wolfe's job duties; the church improperly defined the counseling service of Wolfe; the church failed to inform the congregation of Wygals' complaint; the church failed to properly

advise the congregation upon suspending Wolfe's counseling; and the church failed to properly advise the congregation upon terminating Wolfe. The plaintiffs were allowed to present "expert" witness testimony as follows:

1. Marie Fortune, Clergyperson, United Church of Christ (note: this is not the same as the Church of Christ denomination), working as Executive Director, Center for the Prevention of Sexual and Domestic Violence, Seattle, Washington, was permitted to compare Wolfe's counseling to incest and give opinions on the standard of care for elders in a Church of Christ, although never having experience within a Church of Christ, acknowledging there was no standard of care for churches and the standard she used was one she made up! She was also allowed to testify to a standard of care for pastoral counseling, although admittedly not trained as or engaged in pastoral counseling.

2. Gary R. Schoener, Clinical Psychologist, working as Executive Director, Walk-In Counseling Center, Minneapolis, Minnesota, was permitted to state sexual abuse occurred to J.D.B., and gave opinions on the standard of care for pastoral counseling, yet has never worked as a pastoral counselor. He was allowed to give opinions on the standard of care of elders in a Church of Christ without ever being associated with a Church of Christ.

3. Kathy Morall, M.D., Psychiatrist, Denver, Colorado was permitted to state sexual abuse occurred to John DeBose and give opinions on the standard of care for pastoral counseling.

Appendix B, C & D are copies of jury instructions given by the trial court on the claim of fiduciary duty and the claim of negligent hiring and supervision against the church.

ROCKY MOUNTAIN CONFERENCE OF THE UNITED METHODIST CHURCH/WINKLER[2]

This case is on appeal to the Colorado Court of Appeals. The notice of appeal was filed 4/20/94 as a result of a twelve-day trial ending on January 26, 1994.

Dianne R. Winkler brought suit against Rev. Chambers, the Church and the Conference. The Church settled out for $23,500; a jury verdict was rendered 1/26/94 against Rev. Chambers for breach of fiduciary duty for $57,350 and against the Conference for negligent hiring and supervision for $95,853 and breach of fiduciary duty for $10,651.

Mrs. Winkler started attending the Grace Church in 1988, where Rev. Chambers was senior pastor. She joined the Grace Church in October of 1988. She alleges from August 1990 to March 1992 Rev. Chambers sexually harassed her at the Grace Church on eight specific occasions and during three other periods where she has a general memory of sexual harassment. The complained of conduct consisted of unwanted hugs, "sexual hugs", kissing her cheek/hair and statements that he loved her. On one occasion she claims he put his hand between her legs, stroking her inner thigh below the shorts she was wearing while she was seated next to him on a love seat in his office. On one occasion she claims he purposely rubbed against her body as she descended a ladder, knocking her off, and as he grabbed her, he touched her left breast.

Mrs. Winkler sought out Rev. Chambers for counseling from the early spring of 1990 to the end of 1991 due to the death of her father and emotional problems with her mother.

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[2] *Dianne R. Winkler, Plaintiff, vs. Glenn Chambers, Rocky Mountain Conference of the United Methodist Church, a Colorado non-profit corporation and Grace United Methodist Church, a Colorado non-profit corporation, Defendants.* District Court, City and County of Denver, Colorado, Case No. 93 CV 378, Courtroom 2

Rev. Chambers is alleged not to have acted inappropriately during counseling, except on reflection back she believes he gave her hugs of a sexual nature at the end of some sessions.

Mrs. Winkler told only her husband early on about the claimed sexual harassment; he did nothing. In January 1992 she discussed her complaints with two other women in the Grace Church. She never complained to anyone at the Grace Church until February 29, 1992, when she told Rev. Chambers' secretary, Debbie Sampson, Rev. Harold Anderson, an associate pastor at the Grace Church and the Grace Church janitor. On the following day she went to Bob Moore, a member of the Grace Church Staff Parish Relations Committee. She did not complain to the Conference until April 9, 1992, when she was specifically asked about her complaints following a written complaint of Carol Klein to the Conference.

In March 1992, Carol Klein, a member of the Grace Church, hand delivered a written letter alleging unwanted sexual harassment by Rev. Chambers to Rev. Margaret Rush, Conference District Superintendent. Rev. Rush has administrative responsibility for the Grace Church, as one of the 51 churches in her district, and for Rev. Chambers who is one of the approximately 70 ordained ministers within her district. The written complaint, plus information of complaints by five others, resulted in the permanent removal of Rev. Chambers from the Grace Church on April 9, 1992 and he was also placed under review with the Conference Board of Ordained Ministry and Joint Review Committee, pursuant to The Book of Discipline of the United Methodist Church, which is the ecclesiastical law and procedure of the denomination. Rev. Chambers is now on disability status.

Rev. Chambers was admitted as a member of the Conference in 1965 and has been appointed to many positions in local churches and within the Conference from 1965 to April 1992. He was appointed to Grace Church on July 1, 1979.

Rev. Chambers in 1972, as a result of the breakup of his first marriage, was investigated by a committee appointed by the Bishop which resulted in no Book of Discipline charges being brought but the committee did say he was in need of psychiatric counseling. In 1980 Rev. Chambers' second wife told a bishop he was an alcoholic but no action was taken because the bishop was working closely with Rev. Chambers, who at the time was a district superintendent, and the bishop had not observed any alcohol related conduct by Rev. Chambers.

In the late 1980s two separate district superintendents received complaints of an alcohol nature and spoke to Rev. Chambers about these complaints. At the time of trial Rev. Chambers admitted to being an alcoholic and hiding his problem for years from the Conference and the Church. Rev. Chambers denied deliberately sexually harassing any women and denied any memory of most instances referred to by the complaining women.

Appendix E is the trial court's order denying the Conferences' motion for summary judgment on the First Amendment.

Appendix F is one of the trial court's jury instructions which denies the Conference may follow its adopted rules and procedures in The Book of Discipline to avoid liability.

ROCKY MOUNTAIN CONFERENCE OF THE UNITED METHODIST CHURCH/BOHRER[3]

This case will be appealed to the Colorado Court of Appeals. The motions for new trial are presently pending in the trial court following a thirteen-day trial ending on 3/26/94.

Christa G. Bohrer brought suit against former Rev. Daniel DeHart, the Church and the Conference. The jury rendered a

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[3] *Christa G. Bohrer, Plaintiff vs. Daniel DeHart, Rocky Mountain Conference of the United Methodist Church, a non-profit Colorado corporation and First United Methodist Church of Greeley, a non-profit Colorado corporation, Defendants.* Case No. 93 CV 9434, Courtroom 6

verdict against DeHart on theories of breach of fiduciary duty, outrageous conduct and negligence in the sum of $187,500 and for exemplary damages of $187,500. The verdict against the Church was for breach of fiduciary duty, negligent hiring or supervision and outrageous conduct in the sum of $37,500. The verdict against the Conference for breach of fiduciary duty and negligent hiring or supervision was $150,000 and for exemplary damages of $150,000. The verdict total amount was 50% against the minister, 40% against the Conference and 10% against the Church.

Christa G. Bohrer was active in the Greeley Church Youth Group before DeHart came as the youth minister in 1982, when he was 27. By June of 1985, when she was 14, they were engaged in a clandestine sexual affair, which continued after DeHart left the Greeley Church in the fall of 1985 to continue schooling nearby until the summer of 1988 after she graduated from high school. DeHart continued for a year as a leader in the Conference youth activities after leaving the Greeley Church and Christa Bohrer continued as a youth in the Conference youth leadership. No one at the Church or Conference, including her parents, who were active at the Greeley Church, her mother being a part-time employee and part of the leadership at Conference functions, became aware of the affair until early 1991.

As a result of Christa Bohrer's written complaint to the Conference in January of 1991, DeHart surrendered his membership credentials with the Conference in February of 1991. DeHart chose not to dispute the complaint which would have resulted in charges and a church trial, pursuant to authority in The Book of Discipline. As a result of her complaint to the police in 1992 DeHart was criminally prosecuted for sexual assault on a child. He entered a guilty plea to a misdemeanor and a felony count on 3/18/93 and was sentenced to six years probation and sex counseling on the felony and sixteen months work release in the county jail on the misdemeanor.

Christa Bohrer testified while she intended to keep the affair secret, the Church and Conference should have discovered

its existence because of conduct she stated occurred in the presence of others from the Conference and Church.

The trial court rejected the Conference's motion for summary judgment on the First Amendment (see Appendix G for trial court's order) and during jury instruction preparations and motions stated to the defendants, their efforts to invoke the First Amendment as a defense was frivolous. The trial court also gave a jury instruction identical to Appendix F.

ARGUMENT

The Supreme Court of Colorado's decisions in *Destefano v. Grabrian,* 763 P.2d 275 (Colo. 1988) and *Moses v. The Diocese of Colorado,* 863 P.2d 310 (Colo. 1993) have resulted in questioning how a religious organization may select, assign, supervise and discipline clergy, to question how a religious organization may conduct its administration, and to question in detail how a clergy may conduct pastoral counseling, all in violation of the First Amendment protections.

The imposition of liability on a religious institution for sexual indiscretions of clergy inhibits the institution's exercise of religion in violation of the free exercise clause and/or prescribes acceptable practices (or proscribes unacceptable practices) in violation of the establishment clause, even if the individual clergy's conduct places him outside the protection of the First Amendment. Subjecting a religious institution to liability based on the manner it selects, hires, supervises, disciplines or retains its clergy directly interferes with the institution's free exercise of religion. Where the focus is on the religious institution's actions in its religious context in which the acts occurred the free exercise clause is triggered and it is not a question of a neutral law of general applicability.

This brings the matter squarely into the compelling state interest test and no compelling interest is present which would justify any interference by the state in the institution's free exercise or establishment of religion.

CONCLUSION

The court is requested to issue a writ of certiorari to review the judgment of the Colorado Supreme Court in this case to prevent the courts of Colorado from continuing to ignore the required application of the First Amendment to religious organizations.

Respectfully submitted,

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Dated: May 5, 1994

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APPENDICES

APPENDIX A

HOMER WOLFE

Testimony at trial by the minister defendant, Homer Wolfe, was as follows:

"Q. While you were a minister at Bear Valley Church of Christ, did you have occasion to do some counseling with John DeBose?

A. Yes, sir, I did." (Vol. 13 at 9:3-6)

Q. Did you have a number of sessions with John Debose?

A. Yes, sir I did.

Q. Did you ever at anytime massage John DeBose?

A. No, sir. (Vol. 13 at 9:14-18)

Q. Do you sometimes, as a counselor, or has it been your practice at times in your counseling, to use massage on a counselee?

A. Occasionally, yes, sir. (Vol. 13 at 10:5-8)

Q. What would the purpose of massaging one in counseling?

A. The purpose is to increase the value and the ability to communicate, both to hear and to share. Since John could not share at all, it would have been a waste of time to spend massaging, it seemed to me at that time. (Vol. 13 at 10:14-19)

Q. Referring to the kind of counseling that you have done, Homer, are there different kinds of counseling?

A. Yes, there are.

Q. What are there, two basic types?

A. Two basic types, yes. One is generally speaking, secular counseling and the other is pastoral counseling.

Q. What is secular?

A. The word "secular" itself means the absence of God, without God; and so the secular counselor does not call upon God or pinpoint him or consult him at all. In fact, it is sort of like man pulling himself by his own bootstraps, finding the pulpit within himself and the direct contact. Jeremiah said, it is not in the way of man to get in the steps. In other words, we can't find our way in life without God. And in the pastoral counselor, where a pastor brings — the best picture is of a shepherd. It brings to mind the shepherd without whom the sheep — the sheep are helpless. They can't defend themselves. He gets them food or water. They must have someone to direct them. This is the shepherd. It's man not being able to direct his own steps, must have God's and Christ's help in finding his way out of his hurting way of life into a acceptable, happy way of life. So pastoral counseling depends upon Christ, not upon the counselor, and God.

Q. Have you ever done any secular counseling?

A. No, sir.

Q. All of your counseling has been pastoral?

A. Yes, very definitely.

Q. Is that sometimes referred to as — also as biblical counseling?

A. Yes, sir, it is.

Q. And Christian counseling?

A. Yes, sir, they're the same.

Q. Over the years when you have been called on to counsel people in pastoral counseling, have you explained each time to the counselee what can be done by them — or them in order to obtain help?

A. Yes, sir. I've always made it a point to point out basically the facts of pastoral counseling, telling them that actually I have no power to change your lives. I do not have the wisdom or the understanding of the Lord to change your lives, that — but that I could be a facilitator in order to help them get communication with God and find — (Vol. 13 at 11:8-25; Vol. 12 & 13:1-3)

Q. As a general proposition, Homer, do you have a belief as to what the basic problem is that exists for humans in their relationship with God?

A. Yes. It goes clear back to the beginning of time, beginning of our problems with sin. Adam and Eve sinned against God; immediately they were separated from him. There was not the communication there. There was not the loving and the touching and the presence together. And mankind at that point was becoming as having fallen from grace, fallen from God, fallen from righteousness. And when you say a person is separated from God, he's separated from the source of life. He's separated from the wisdom. Their lives can't be guided or changed or improved. So our basic problem is our separation from God, and we were supposed to be seeking to get back to him. The closer we get to the source of life, the happier we are. The more we commune with him, the better quality of life we're going to have.

Q. Do people hide from God as a result of the —

A. It's been happening since Adam and Eve hid from God and went behind the trees and covered themselves with fig leaves and — as Jonas tried to hide from God. The Bible is full of it. We see it all around us, yes.

Q. In your activities as a minister over a period of approximately 40 years, were you at all times trying to help people find ways to do away with that separation from God?

A. Yes. This was my entire basic goal, to get people back to God, in communication with him, living with him and for

him; and all of the counseling that I did was designed to do that. And, of course, the only ways that God speaks — letting him be responsible, let him keep his promises, learning our — helping people to learn how to open their hearts.

Q. Do you sincerely believe that — Homer, that if a person reveals his problems to God and admits that he needs help from God, he will receive help?

A. God has promised that. He has said that he will — ask and you shall receive, knock and you shall find. The ways of life and God will be revealed and will be opened and will be revealed as we ask God and are willing to change our lives, straying away from those things that are ungodly and moving forward to those things that are godly. (Vol. 13 at 41:19-25; Vol. 42 & 43:1-12)

Q. Homer, what are your beliefs about the subject of touching among human beings?

A. I believe that it is one of the best ways to communicate — of communicating your care and concern for the other person. We have been created in the image of God. God is love, and we are made in his image. Man can't function happily, none of us can, if we do not feel loved. It's one thing to tell somebody — say, I love you; it's entirely another thing to have it demonstrated in some way, and touching has always been some way of saying, I care about you, you're important, you're somebody, you have value, and that's something everybody needs. (Vol. 13 at 15:11-23)

APPENDIX B

INSTRUCTION NO. 13

In order for either plaintiff, Denise or John DeBose, to recover their claims of breach of fiduciary duty from either defendant, Homer Wolfe or Bear Valley Church of Christ, you must find all of the following have been proved:

1. The specific defendant was acting as a fiduciary of the specific plaintiff;

2. The specific defendant breached a fiduciary duty to the specific plaintiff;

3. The specific plaintiff incurred, injuries, damages or losses;

4. The specific defendant's breach of fiduciary duty was a cause of the specific plaintiff's injuries, damages or losses.

If you find that any one or more of these 4 propositions has not been proved by a preponderance of the evidence, then your verdict must be for the defendant.

On the other hand, if you find that all of these 4 propositions have been proved by a preponderance of the evidence, then your verdict must be for the plaintiff as to that claim for breach of fiduciary duty.

APPENDIX C

INSTRUCTION NO. 14

In determining whether either defendant, Homer Wolfe or Bear Valley Church of Christ was acting as a fiduciary for either plaintiff, Denise DeBose or John DeBose, with regard to care or counseling, you shall consider the following:

1. The degree of control the defendant exercised over the care or counseling;

2. The extent to which the plaintiff placed trust and confidence in the Defendant in dealing with the care or counseling; and

3. The level of expertise which the plaintiff possessed in his or her own dealings with the care or counseling.

APPENDIX D

INSTRUCTION NO. 17

In order for either plaintiff to recover from the defendant, Bear Valley Church of Christ, a Colorado corporation, on his or her claim of negligent hiring or supervision, you must find all of the following have been proved:

1. Plaintiff incurred injuries; damages or losses:

2. The defendant was negligent in its hiring or supervision of Homer Wolfe; and

3. The defendant's negligence was a cause of the plaintiff's injuries, damages or losses.

If you find that any one or more of these propositions has not been proved by a preponderance of the evidence, then your verdict must be for the defendant as to that plaintiff.

On the other hand, if you find that all of these propositions have been proved by a preponderance of the evidence, then your verdict must be for that plaintiff as against Bear Valley Church of Christ.

APPENDIX E

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 93 CV 378, Courtroom 2

DIANNE R. WINKLER, *Plaintiff,* v. GLENN CHAMBERS; ROCKY MOUNTAIN CONFERENCE OF THE UNITED METHODIST CHURCH, a Colorado non-profit corporation; and GRACE UNITED METHODIST CHURCH, a Colorado non-profit corporation, *Defendants.*	ORDER RE: DEFENDANT, ROCKY MOUNTAIN CONFERENCE OF THE UNITED METHODIST CHURCH'S, MOTION FOR SUMMARY JUDGMENT ON FIRST AMENDMENT GROUNDS

THE COURT, having considered motion for summary judgment filed by defendant, Rocky Mountain Conference of the United Methodist Church, the response, the reply, the court file and relevant authorities, and being sufficiently advised in the premises, finds, concludes and orders as follows:

1. The defendant, Rocky Mountain Conference of the United Methodist Church ("Conference"), moves for summary judgment on all of plaintiff's claims (negligent hiring, supervision and retention; breach of fiduciary duty; and outrageous conduct) on the ground that they are barred by both the free exercise and establishment clauses of the First Amendment to the United States Constitution. In essence, the conference claims that its hiring, retention and supervision of defendant, Chambers, was a religious activity rather than a secular activity and that subjecting it to civil liability for such activity violates the First Amendment. The Court disagrees.

2. One moving for summary judgment must establish that, resolving all doubts regarding the evidence in favor of the nonmoving party, there is no genuine issue of material fact and that it is entitled to summary judgment as a matter of law. See *O'Herron v. State Farm Mutual Automobile Insurance Co.*, 397 P.2d 227 (Colo. 1964).

3. A court may entertain claims against a religious organization consistent with the First Amendment where those claims call for the application of neutral state laws rather than for the resolution of disputed issues of religious doctrine and practice. *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440 (1968). For purposes of the foregoing statement, common law principles are part of the state law. See *Bishop & Diocese of Colorado v. Mote,* 716 P.2d 85 (Colo. 1986).

4. Plaintiff's claims are common law tort claims and such claims have been held actionable in Colorado against clergy and religious organizations. See *Destefano v. Grabrian,* 763 P.2d 275 (Colo. 1988).

5. The critical inquiry in testing such claims against a constitutional challenge under the First Amendment is whether resolution of those claims require the interpretation or weighing of church doctrine as opposed to the application of neutral principles of law. See *Moses v. Diocese of Colorado,* P.2d (Colo. Nov. 15, 1993). In the instant case, even accepting defendant's statement of the facts as undisputed, the Court concludes that defendant has not demonstrated as a matter of law that plaintiff's claims require the interpretation of its religious doctrine as opposed to the application of neutral principles of law. For the purposes of this conclusion the Court has accepted defendant's contention that it proceeded with its administrative responsibilities under the Book of Discipline and processed the written complaint against Rev. Chambers through the Book of Discipline procedures. Assuming that to be the case, the Court is not persuaded that plaintiff's

claims constitute a challenge to the religious beliefs or doctrines of the church. Accordingly, the motion is denied.

Dated this 7 day of January, 1994.

BY THE COURT:

JOHN N. MCMULLEN
DISTRICT COURT JUDGE

cc: All counsel.

APPENDIX F

INSTRUCTION NO. 21

Evidence that an organization did or did not follow its internal rules or policies, such as The Book of Discipline, is only one factor to be considered in determining whether the organization acted reasonably or whether it breached a duty.

APPENDIX G

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Civil Action No. 93CV434

CHRISTA G. BOHRER, *Plaintiff,* v. DANIEL DEHART, ROCKY MOUNTAIN CONFERENCE OF THE UNITED METHODIST CHURCH, AND FIRST METHODIST CHURCH OF GREELEY, *Defendants.*	ORDER

THE COURT, having reviewed numerous Motions for Summary Judgment and the Responses and the Replies thereto, makes the following findings and conclusions, and issues the following order:

I. ALLEGATIONS

1. The Amended Complaint filed in this case on February 22, 1993 alleges the following relevant facts:

A. In 1983, at the age of twelve, Plaintiff began counseling with Defendant Rev. Daniel Dehart a minister employee at the First United Methodist Church of Greeley.

B. Defendant Rocky Mountain Conference of the United Methodist Church is a Colorado corporation with its primary office in Denver, Colorado.

C. Defendant DeHart emotionally and sexually abused the Plaintiff from 1983, to May 1988. The abused occurred in a variety of locations, including sacristies of several churches. Plaintiff alleges that assorted members of the

First United Methodist Church of Greeley witnessed inappropriate behavior between Defendant DeHart and Plaintiff.

D. Defendant DeHart was the Youth Coordinator of the Greeley Peaks Sub-District where he had increased access to children, including the Plaintiff. Many times Defendant DeHart sexually abused the Plaintiff while acting in this role. The alleged abuse included fondling, sexual intercourse and emotional manipulation.

E. The Conference and the Church had a duty to prevent reasonable foreseeable harm in the hiring, supervision and training of DeHart. Defendant DeHart acted as the agent of each of the other three Defendants.

F. Agents of the Conference and the Church repeatedly witnessed inappropriate behavior from Defendant DeHart. All knew or should have known Defendant DeHart was violating boundaries and abusing the trust he sought as a minister with the Plaintiff as well as other teenagers. The policy of each organization has for decades been dealing in secret with sexual abuse and then "whitewashing" the problems. There were no clear policies to identify and stop the abuse.

G. On January 24, 1991, the Plaintiff wrote directly to the leader of the Conference, Bishop Roy Sano, with the details of her years of betrayal. Bishop Sano refused further inquiries from the Plaintiff.

H. Defendant DeHart has admitted sexual involvement with the Plaintiff.

I. Two Conference superintendents were sent to convince Defendant DeHart to surrender his credentials voluntarily in an attempt to frustrate any accountability or embarrassment to the Conference. Defendant DeHart's surrender of credentials was labeled "honorable" in order to allow for future reinstatement.

2. Plaintiff's Amended Complaint filed February 22, 1993, asserts the following claims for relief:

A. Breach of fiduciary duty against all defendants.

B. Negligent hiring/supervision/training against Defendants Church and Conference.

C. Outrageous conduct against all defendants.

D. Vicarious liability against Church, Conference, and Sub-District.

E. Punitive damages against all defendants.

II. MOTION FOR SUMMARY JUDGMENT BASED UPON THE FIRST AMENDMENT AND LACK OF SUBJECT MATTER JURISDICTION

3. Defendant Conference filed a Motion For Summary Judgment Based Upon First Amendment and Lack of Subject Matter Jurisdiction on December 27, 1993, and Reply on January 7, 1994. Defendant Church joined in the Motion on December 28, 1993. Unauthorized supplemental pleadings were filed on January 18, 1994, by the Plaintiff and on January 24, 1994, and February 1, 1994, by Defendant Conference. The Motion sets forth the following arguments:

A. All of Plaintiff's claims against the Conference are barred by the Free Exercise Clause of the First Amendment which proscribes "any law respecting an establishment of religion, or prohibiting free exercise thereof". Consideration of these claims requires a court and/or jury to analyze the religious doctrine, ecclesiastical law, matters of government, and discipline of the church, this court lacks subject matter jurisdiction over Plaintiff's claims.

1) The claim of breach of fiduciary duty against the Conference requires a determination of the relationship between the Conference and the Plaintiff which involves an application of the teachings and principles set forth in the Book of Discipline.

2) The claims relating to negligent hiring/supervision/training involve second guessing ecclesiastical matters relating to appointing, supervising, and disciplining ministers as laid out in the Book of Discipline, a religious document.

3) Tort rules and Plaintiff's tort action constitute state action and burden the Conference's free exercise of religion.

4) Permitting punitive damages for the Plaintiff's claims would have a chilling effect upon the Conference's free exercise of religion.

4. In the Response filed December 30, 1993, to the Motion for Summary Judgment regarding the First Amendment and Lack of Subject Matter Jurisdiction, the Plaintiff argues as follows:

A. The First Amendment does not prohibit Plaintiff's claims.

1) The First Amendment does not protect religious organizations from tort liability.

2) The Plaintiff at no point has asked this court or jury to interpret church doctrine.

5. Under C.R.C.P. 56(c), summary judgment is proper only when the pleadings, affidavits, depositions, or admissions establish that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The burden of establishing the nonexistence of a genuine issue of material fact is on the moving party. *E.g., Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986); *Urban v. Beloit Corp.*, 711 P.2d 685 (Colo. 1985); *Ginter v. Palmer and Co.*, 196 Colo. 203, 585 P.2d 583 (1978). This burden has two distinct components: an initial burden of production on the moving party, which burden when satisfied then shifts to the non-moving party, and an ultimate burden of persuasion, which always

remains on the moving party. *See* 10A C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* 2727 (2d ed. 1983).

6. In a First Amendment challenge, the pivotal inquiry is whether the facts of the case require the interpretation or weighing of church doctrine, or the application of neutral principles of law. *Moses v. Diocese of Colorado,* 863 P.2d 310 (Colo. 1993).

7. A court may entertain claims against a religious organization consistent with the First Amendment where those claims call for the application of neutral state laws rather than for the resolution of disputed issues of religious doctrine and practice. *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440 (1968). For purposes of the foregoing statement, common law principles are part of the state law. *See Bishop & Diocese of Colorado v. Mote,* 716 P.2d 85 (Colo. 1986).

8. Plaintiff's claims for relief are all common law tort claims and do not require the Court to decide, weigh, or interpret ecclesiastical matters. Such claims have been held actionable against clergy members and their superiors when supported by competent evidence in the record. *See Moses,* supra at 321.

9. Plaintiff's claim of breach of fiduciary duty is based in common law principles. "A fiduciary relation exists between two persons when one of them is under a duty to act for or to give advise for the benefit of another upon matters within the scope of the relation." Restatement (Second) of Torts Sec. 874, comment a (1979). "The existence of the fiduciary relationship is a question of fact the jury." *Moses,* at 322.

10. Plaintiff's claim of negligent hiring/supervision/training is based in tort law and does not ask nor require the Court to consider internal policy of the church to determine whether the Conference breached a duty to the Plaintiff.

11. The Defendant ignores the standard established in *Moses, supra* for dealing with issues of negligent supervision and hiring by a religious entity. Using agency and employment law, the Court considered whether there was an attribute of character held by the agent that created an undue risk of harm and the

anticipated degree of contact with other persons in carrying out the assigned duty.

12. Defendant Conference states in its Reply that "Plaintiff argues that she is not requesting the Court or jury to interpret church doctrine. While that may be true from the Plaintiff's perspective, the defenses raised by the Defendant will necessarily involve extensive review by the Court or jury of church doctrine and procedure." (Defendant's Reply, p.5) The Defendant cannot raise church doctrine as an issue and then demand to be dismissed because the First Amendment prohibits inquiry into church doctrine.

13. The critical inquiry in testing such claims against a constitutional challenge under the First Amendment is whether resolution of those claims require the interpretation or weighing of church doctrine as opposed to the application of neutral principles of law. *Moses,* supra. In the instant case, even accepting Defendant's statement of the facts as undisputed, the Court concludes that Defendant has not demonstrated as matter of law that Plaintiff's claims require the interpretation of its religious doctrine as opposed to the application of neutral principles of law. Assuming that to be the case, the Court is not persuaded that Plaintiff's claims constitute a challenge to the religious beliefs of doctrines of the church.

14. Defendant's pleadings fail to establish that the nonexistence of a genuine issue as to any material fact. Defendant has not exhibited as a matter of law that Plaintiff's claims require the weighing or interpretation of religious doctrine as opposed to the application of neutral principles of law.

Accordingly, the motion is denied.

III. MOTION FOR SUMMARY JUDGMENT OF DEFENDANT ROCKY MOUNTAIN CONFERENCE OF THE UNITED METHODIST CHURCH ON SPECIFIC GROUNDS AS TO VARIOUS CLAIMS ALLEGED.

Defendant Conference filed a Motion for Summary Judgment on Specific Grounds As To Various Claims Alleged on

December 17, 1993, and Reply on January 7, 1994. Defendant, First United Methodist Church of Greeley, Colorado joined in on the Motion on December 28, 1993.

15. The Motion sets forth the following arguments:

A. The Defendant, Conference never had a fiduciary relationship with Plaintiff.

B. There is insufficient evidence to support the Plaintiff's claim of negligent hiring/supervision/training.

C. There are insufficient facts as a matter of law to support plaintiff's claims for outrageous conduct against the Conference.

D. The Conference is not vicariously liable for the actions of Defendant, DeHart.

E. Punitive damages cannot be awarded without some form of liability established against the Defendant and the material facts in this case do not permit a claim for punitive damages.

16. In the Response filed December 29, 1993, to the Defendant's Conference's First Motion For Summary Judgment, the plaintiff argues as follows:

A. The Plaintiff was in a fiduciary relationship with the Conference.

B. The claim for negligent hiring and/or supervision is supported by material facts.

C. The material facts support a claim for outrageous conduct.

D. There is evidence that the Conference ratified the actions of Defendant DeHart and is therefore vicariously liable for those actions.

E. There is evidence upon which a jury could assess punitive damages against the Conference.

17. Defendant's arguments in support of the motion for summary judgment relating to: a) the existence of a fiduciary relationship between Defendant and Plaintiff; b) the sufficiency of evidence to support the Plaintiff's claims of negligent hiring/supervision/training and for outrageous conduct against Conference; c) the existence Defendant's vicarious liability for the actions of DeHart; and d) sufficiency of evidence to support a claim for punitive damages, all involve questions of facts. As to these arguments the Court must determine whether, resolving all doubts regarding the evidence in favor of the nonmoving party, the Defendant has established that there is no genuine issue of material facts. C.R.C.P. 56.

18. Plaintiff's claim for punitive damages requires that she prove beyond a reasonable doubt that the Defendant acted with evil intent or with wanton & reckless disregard of Plaintiff's rights. A genuine question of material fact is presented by the Defendant's testimony. Defendant has failed to show that there is no issue as to any material fact regarding the claim for punitive damages.

19. Defendant has not presented a set of undisputed facts. The facts presented by the Plaintiff in her response, show that Defendant's statement of facts is substantially incomplete as it relates to the issues presented. Even if all material facts regarding these issues were undisputed, which does not appear to be the case, the Court has not been presented with such facts. The Court finds that the facts offered by the Plaintiff in her responses are sufficient to withstand summary judgment on the above-listed factual issues.

20. The motion filed by the Defendant Conference is essentially the same as the Motion for Summary Judgment filed by the Defendant Church on December 8, 1993. (The Church filed an "Appendix" on February 9, 1994, to the motion which was unexplained and appears to be unauthorized.)

The motions are denied.

IV. DEFENDANT DEHART'S SECOND MOTION FOR SUMMARY JUDGMENT, RELATING TO THE OUTRAGEOUS CONDUCT CLAIM

Defendant DeHart filed his second Motion for Summary Judgment, Relating to the Outrageous Conduct Claim on December 29, 1993, and the Reply on January 27, 1994.

21. This motion sets forth the following arguments:

A. The Allegations that Defendant, DeHart had harmful or offensive contact with the Plaintiff, without her consent, would amount to allegations of battery.

B. Facts which establish a traditional intentional tort claim do not set up a claim for outrageous conduct.

C. Outrageous conduct is a gap-filler and cannot be regarded as encroaching on theories of liability already occupied by traditional intentional tort theories.

D. The operative facts on which Plaintiff relies on to establish a claim of outrageous conduct involve sexual contacts between the Plaintiff and DeHart. Such contacts would involve the traditional tort of battery, and would not establish outrageous conduct.

22. In the Response filed on January 13, 1994, to the Motion For Summary Judgment regarding Outrageous Conduct, the Plaintiff argues as follows:

A. The same claim can be, and often is, the basis for multiple claims for relief.

B. The facts support a claim for outrageous conduct against Defendant DeHart.

23. Plaintiff is not pursuing an action for assault and battery. Plaintiff's claim for outrageous conduct is based upon the existence of a fiduciary relationship between the Plaintiff and the Defendant and the conduct resulting from the breach of that relationship. Plaintiff may plead alternative claims for relief. Facts may support more than one legal theory.

24. Outrageous conduct is conduct that is so extreme in degree as to go beyond bounds of decency and can be regarded as atrocious and intolerable in a civilized community. *Montgomery Ward & Co., Inc. v. Andrews,* 736 P. 2d 40, 46. To meet the "threshold level of conduct" to state a cause of action for outrageous conduct, plaintiff must allege "defendant has engaged in a pattern of conduct that was intended to cause or recklessly did cause severe emotional distress . . .". *Simmons v. Prudential Ins. Co. of America,* 641 F. Supp. 675, 683. The facts offered by the Plaintiff in her Response support a claim of outrageous conduct.

25. Material facts relating to the allegations that Defendant DeHart had harmful or offensive contact with the Plaintiff, without her consent are at issue as evidenced by the Plaintiff's and Defendant's testimonies. Plaintiff has presented the Court with facts supporting her claim of outrageous conduct. Defendant has not presented this court with facts which show the nonexistence of an issue of material fact relating to his argument that Plaintiff's claims are claims for the intentional tort of battery.

Accordingly the Motion is denied.

V. DEFENDANT DEHART'S SECOND MOTION FOR DETERMINATION OF QUESTIONS OF LAW RELATING TO FIDUCIARY DUTY

Defendant DeHart filed the Second Motion for Determination of Questions of Law on December 29, 1993, and the Reply on January 27, 1994.

26. This motion sets forth the following arguments:

A. Defendant DeHart did not owe a fiduciary duty to the Plaintiff as a matter of law because there never was a fiduciary duty.

1) By nature, fiduciary duties arise when one person exercises control of the financial affairs of another.

2) The relationship between the Plaintiff and Defendant DeHart involved no such situation that could be characterized as a fiduciary relationship.

3) Characterizing every situation where trust and confidences are reposed in another as a "fiduciary relationship" invites broad fiduciary liability and would constitute an ill-conceived social policy.

B. Assuming that a pastoral counseling relationship may, in theory, give rise to a fiduciary duty, the existence of a fiduciary duty is still dependent on bestowal and acceptance of control, and relates only to the subject matter affected by the fiduciary duty.

1) There was no focused undertaking comparable to the one referred to in *Destefano v. Grabrian*, 763 P.2d 275 (Colo. 1988), in the pastoral counseling relationship between Christa Bohrer and Defendant DeHart.

2) If there was some focused undertaking in the pastoral counseling relationship between Christa Bohrer and Defendant DeHart, any fiduciary duty would be limited to that context.

C. If it is assumed that Christa Bohrer and Defendant DeHart for some period of time had a pastoral counseling relationship which gave rise to a fiduciary duty, that fiduciary duty existed only so long as the pastoral counseling relationship existed.

1) No pastoral counseling relationship could have existed beyond August 1985, the point at which Defendant DeHart left his minister position.

2) Any pastoral counseling relationship between Defendant DeHart and Plaintiff existed for a brief period of time. At a minimum, that creates an issue of fact as to time period during which a fiduciary duty could have existed.

D. The other sources of a "fiduciary duty" suggested by the Plaintiff are insufficient to trigger a fiduciary duty.

1) Defendant Dehart's status as a minister did not establish a fiduciary relationship between himself and the Plaintiff giving rise to a fiduciary duty.

2) Defendant DeHart's status as sub-district youth coordinator did not give rise to a fiduciary duty.

3) The plaintiff's ostensible perception of Defendant DeHart as a "father figure" did not give rise to a fiduciary duty.

27. In the Response filed January 13, 1994, to Defendant DeHart's Second Motion For Determination of Questions of Law, Relating to Fiduciary Duty, the Plaintiff argues as follows:

A. The existence of a fiduciary relationship, and any fiduciary duty arising therefrom, does not, in the state of Colorado, require that there be a transfer of the control over financial affairs.

B. The fiduciary relationship and the fiduciary duty owed to Plaintiff by Defendant DeHart are not, as a matter of law, limited to the pastoral counseling setting.

C. Defendant's status is not determinative of the issue of whether he was a fiduciary to Plaintiff.

28. Under C.R.C.P. 56(h), determination of a question of law is proper only when there is no genuine issue of material fact necessary for the determination of the question of law.

29. The court determined in its review of Defendant, Conference's, Motions for Summary Judgment filed on December 28, 1993, as discussed in paragraphs nine and seventeen of this order, that the existence of a fiduciary relationship between clergy and/or its superiors and parishioner is a question of fact.

30. A fiduciary relationship does not require the exercise of control over financial affairs. *Destefano, supra* and *Moses,* supra.

31. The existence of a fiduciary relationship is not dependent on the existence of a professional relationship. *Moses,* supra, at 321. Defendant's professional status is not determinative of a fiduciary relationship.

32. The existence of a fiduciary relationship between the Plaintiff and DeHart at various times relevant to this case is an issue of material fact necessary for the determination of questions of law relating to fiduciary duty.

Accordingly, the Motion is denied.

VI. DEFENDANT DEHART'S FIRST MOTION FOR SUMMARY JUDGMENT BASED ON THE STATUTE OF LIMITATIONS

Defendant DeHart filed this Motion for Summary Judgment on December 29, 1993, and the Reply on February 10, 1994.

33. The motion sets forth the following arguments:

A. The nature of the conduct giving rise to the claims against Defendant DeHart is claimed to have involved harmful or offensive contact, involving sexual conduct, intentionally inflicted on the Plaintiff by DeHart without the Plaintiff's consent.

B. Such conduct defines the intentional tort of sexual assault.

C. Where the Plaintiff's contention is that the Defendant's conduct involved sexual assault, civil claims arising out of such alleged conduct would be governed by the one-year statute of limitations governing claims for assault and battery.

D. The statute of limitations started to run on August 2, 1988, Plaintiff's eighteenth birthday.

E. There was no tolling of the Plaintiff's claims after she turned 18, because Plaintiff was aware that she had been

injured by the sexual conduct with DeHart and that DeHart was the cause of her injury when she attained majority.

F. The statute of limitations expires on August 2, 1989.

G. This action was commenced upon the filing of the Complaint on January 25, 1993, three and a half years after the statute of limitations had run. These claims are therefore time-barred.

H. While the claims against DeHart are denominated as claims for breach of fiduciary duty and outrageous conduct, they are actually claims for assault and battery and are therefore governed by the one year statute of limitations.

I. A claim for punitive damages is not a separate free-standing claim, therefore if the Plaintiff's claims for actual damages is determined to be time-barred, there are no circumstances which would entitle her to punitive damages.

34. In the Response filed January 28, 1994, to the Motion for Summary Judgment, Based on the Statute of Limitations, the Plaintiff argues as follows:

A. The nature of Plaintiff's claim is a breach of trust.

B. The three year statute of limitations applicable to breach of fiduciary duty claims, C.R.S., section 13-80-101(f), applies to Plaintiff's first claim for relief against DeHart. Her claim had not run as of July 1, 1990, and her claim is timely under section 13-80-103.7 C.R.S.

C. Outrageous conduct is governed by the two year statute of limitations set forth at section 13-80-102(a), C.R.S. The Plaintiff had until her eighteenth birthday on August 2, 1990, to file her claim. Hence, the claim was not barred as of July 1, 1990, and is therefore, timely under the six year statute contained in C.R.S. section 13-80-103.7 (1987 Repl. Vol. 6A) (1992 Cum. Supp.).

35. This motion is repetitive. This court in its order dated September 2, 1993, stated that whether a particular statute of

limitations is applicable is determined by the nature of the right sued on and not by the form of action or the relief demanded. *Richards Engineers, Inc. v. Spanel*, 745 P.2d 1031, 1034 (Colo. App. 1987); *Association of Owners, Satellite Apt., Inc., v. Otte,* 550 P.2d 894, 896 (Colo. App. 1976). Plaintiff's claims have been consistently based upon the breach of a fiduciary duty. The evidence in the Response remains consistent in supporting this bases.

36. C.R.S. section 13-80-103.7(4), 1992 Cum. Supp. (1987 Repl. Vol. 6A) extends the statute of limitations as to civil actions based on offenses as described in section (1) of this section for which the applicable statute of limitations in effect prior to July 1, 1990, has not yet run on July 1, 1990. This court has previously stated in its Order of September 2, 1993, that 13-180-103.7 was the statute in effect when the Plaintiff filed her Complaint on January 25, 1993.

37. Once again, the Defendant filed an unauthorized Supplement with additional argument.

Accordingly the motion is denied.

VII. REQUEST FOR ORAL ARGUMENT

38. Oral argument is not necessary and would not be helpful to the Court.

Done this 15th day of February, 1994.

BY THE COURT

CONNIE L. PETERSON
DISTRICT JUDGE

Copies mailed to
counsel 2/15/94

APPENDIX H

FARR, SMITH & TARANTO
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April 28, 1994

BY FEDERAL EXPRESS

Neil Quigley
Quigley & Bruce
1010 Cherry Tower
350 South Cherry Street
Denver, CO 80222

RE: Diocese of Colorado v. Moses, No. 93-1678

Dear Mr. Quigley:

On behalf of petitioners in the above case, I hereby consent to the filing of an *amicus* brief in the United States Supreme Court by the Bear Valley Church of Christ and the Rocky Mountain Conference of the United Methodist Church.

Sincerely,

H. Bartow Farr, III

HBR:tj